IN THE

Supreme Court of the United States

October Term, 1942

No.....

LANE-WELLS COMPANY, a corporation, and TECHNICRAFT ENGINEERING CORPORATION, a corporation,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The findings of fact and the opinion of the Tax Court of the United States (formerly the Board of Tax Appeals) are reported in 43 B. T. A. 463. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit was filed March 22, 1943, and is reported in 134 Fed. (2d) 977.

Jurisdiction.

The judgment of the Circuit Court of Appeals was filed on March 22, 1943, at which time a petition for rehearing was denied. This petition for Writ of Certiorari is filed within three months after the filing of the judgment of the Circuit Court of Appeals for the Ninth Circuit.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, 28 U. S. C. A. 347.

Statement of the Case.

The essential facts of the case herein are stated in the accompanying petition for Writ of Certiorari and in the interests of brevity are not repeated herein.

Specification of Errors.

The Circuit Court of Appeals erred in each of the following particulars:

1. In holding that petitioners' income was royalty income, when by doing so it erroneously held itself bound by a conclusion of law, which it assumed was a finding of fact.

2. By not affording the taxpayer an opportunity to introduce the evidence of segregation indicated in both the decision of the Tax Court and the Circuit Court of Appeals, by proper remand to the Tax Court of the United States.

3. In effectually reversing findings of the Tax Court, which findings are of pure fact and supported by substantial evidence, and which findings compel a conclusion of law different from that to which the Court arrived in this case.

Argument and Authorities in Support of Petition for Writ of Certiorari.

It is petitioners' contention that despite the fact that there was the use of the words "license agreement", "royalty", "licensor" and "licensee", in tax matters form must give way to substance. The income in this case was the result of moneys set aside by affiliated companies of Technicraft for the purpose of paying Technicraft to carry on the research and development upon which these affiliated companies depended. There is no contradiction

in the evidence that this was the case. The payments were made pursuant to an agreement by Mr. Wells and Mr. Lane (who owned and controlled the various Lane-Wells companies) that 15% of the gross business of these companies would be set aside to pay for engineering, research and development. As to this evidence, the Circuit Court of Appeals said, "Obviously, the Board could reject the testimony of the prior agreements that the furnishing of these patents and models and mechanical devices or processes were mere professional engineering services paid for by the 15 per cent of gross income." Whether the Tax Court could have rejected such testimony or not, the fact of the matter is that *it did not reject such testimony.* We refer to the findings of fact of the Tax Court, from which we quote as follows: "When the original exclusive license agreement was made with Mims by the Lane-Wells Co. of California on December 21, 1932, Lane and Wells agreed between themselves to set aside 15 per cent of the income of the Lane-Wells Co. of California for research and development" [Tr. 59]. Here we find that the Tax Court did not reject the testimony as to such agreement, but definitely found such agreement to be a fact. Hence, it is obvious that the Circuit Court of Appeals has either (1) overlooked the record, or (2) undertaken to ignore it. In either particular, such action by the Circuit Court of Appeals constitutes a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

By ignoring the findings of fact by the Tax Court, the Circuit Court is in conflict with its own former decision in *Commissioner v. Cecil B. DeMille etc.*, 90 Fed. (2d) 12, wherein it held that the findings of the Board of Tax Appeals are conclusive if (1) based upon pure fact, and

(2) sustained by any substantial evidence. This decision was predicated upon the decision of this Court in *Elmhurst Cemetery Co. of Joliet v. Commissioner,* 300 U. S. 37, 81 L. ed. 491, 57 S. Ct. 324. It is without question that the Circuit Court of Appeals has no power to make an independent determination of the matters which were in issue before the Tax Court. *Helvering v. National Grocery Co.,* 304 U. S. 282, 82 L. ed. 1346. The Circuit Court does not have the power to make its own findings of fact and it may not substitute its view of the facts for that of the Tax Court. *Helvering v. Rankin,* 295 U. S. 123, 79 L. ed. 1343, 55 S. Ct. 732. See also the very recent decision of this Court in *Wilmington Trust Co. (ex Ortiz) v. Helvering,* 316 U. S. 164, 62 S. Ct. 984, 86 L. ed. 1352.

The evidence in this case reveals that all of the income of Technicraft derived from 15% of the gross income of its affiliated companies was for engineering services rendered. In its decision, the Tax Court of the United States indicated that the taxpayer had failed to segregate portions of that 15% that may have been attributable to engineering services from those portions which are attributable to the use of patents. By its decision in the case of *U. S. Universal Joints Co. v. Commissioner,* 46 B. T. A. 15, the Tax Court revealed that had such a segregation been made, its conclusions would have been different. Before the Circuit Court of Appeals, the taxpayer called that Court's attention to the fact that no such segregation was made in the hearing before the Tax Court for the reason that 100% of the 15% of the gross income of the affiliated companies was attributable to engineering services, the same having been paid in pursuance of the agreement between Mr. Wells and Mr. Lane, which the

Tax Court found had taken place on December 12, 1932 [Tr. 59]. Nevertheless, the taxpayer urged that in any event it should at least be afforded a further hearing before the Tax Court so as to enable it to show such a segregation, based upon the reasonable value of the engineering services as distinguishable from the reasonable value of the use of patents. This request was ignored by the decision of the Circuit Court of Appeals in its affirmation of the decision of the Tax Court. By this action, the taxpayer is precluded from presenting evidence which, in the case of *U. S. Universal Joints Co. v. Commissioner, supra*, had the effect of avoiding a personal holding company status for the taxpayer. It will be apparent to the Court that the petitioner, Technicraft, was not an "incorporated pocketbook" as contemplated by Congress in the enactment of the Personal Holding Company Act. It will further be apparent, even from the briefs of government counsel that Technicraft is the unfortunate victim of technical construction of the Act. Justice is not served in this case unless petitioners are enabled to present the evidence of segregation that the decisions of the Tax Court and the Circuit Court of Appeals have indicated, and thus avoid the harsh results of a personal holding company status. Failure on the part of the petitioners to introduce evidence of such segregation is not due to negligence or laches of any sort. As a matter of fact the record reveals that the value of the patent licenses themselves was no more than $200.00 per month [Tr. 177]. The taxpayer did not introduce additional such evidence because it conscientiously and honestly considered 100% of its income as the result of engineering services, and therefore saw no propriety in artificially apportioning or segregating such income.

We appreciate the conditions under which certiorari may be granted by this Honorable Court. In this particular case, there has been so drastic a departure from usual accepted processes of judicial administration as to warrant the intervention and supervision of this Court. Petitioners diligently presented all of the facts to the Tax Court. The Tax Court found petitioners' evidence to be true and based its findings accordingly. As a conclusion of law, the Tax Court held that the income was royalty income despite its finding that the income was paid under agreement to provide for engineering services. In reviewing the matter, the Circuit Court of Appeals ignored the findings of fact of the Tax Court and affirmed the decision of the Tax Court by citing a conclusion of law of the Tax Court as a finding of fact. In addition, the Circuit Court of Appeals has closed the door to petitioners' opportunity to introduce additional evidence that would clearly reveal that it was not a personal holding company within the meaning of that term as defined by section 351 of the Revenue Act of 1936. We respectfully pray that this Honorable Court take jurisdiction in the premises.

June ....., 1943.

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